

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: November 10, 2008 REPORT NO.
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Development Services Department
SUBJECT: APPEAL BY BRIGGS LAW CORPORATION OF THE ENVIRONMENTAL
DETERMINATION OF EXEMPTION FOR 860 AGATE MAP WAIVER - PROJECT NO.
161894.
COUNCIL DISTRICTS: 2
STAFF CONTACT: Kenneth Teasley (446-5390)/Linda French (446-5235)

REQUESTED ACTION:

Appeal of the environmental determination of exemption prepared for a condominium conversion within the Pacific Beach Community Plan area. The project is known as 860 Agate Map Waiver - Project No. 161894.

STAFF RECOMMENDATIONS:

1. **Deny** the appeal and uphold the Environmental Determination.
2. Make an express finding that the information provided by the appellant and his experts should be excluded from the record because it is argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

EXECUTIVE SUMMARY:

This is a California Environmental Quality Act (CEQA) appeal similar to other condominium conversion project appeals previously brought before the City Council and denied.

The denial of this appeal would allow the applicant to continue processing their Map Waiver request through the discretionary hearing process.

Basis for Appeal: The appellant's appeal states: "The determination that the project is exempt from environmental review under the California Environmental Quality Act (CEQA) is wrong. The project does not qualify for exemption under the CEQA Guidelines. Furthermore, the project does not qualify for exemption under the CEQA Guidelines based on exceptions to exemption arising from the cumulative and other potentially significant adverse environmental impacts of converting apartments to condominiums, especially in light of the numerous proposed conversions and the serious decline in affordable housing that the City of San Diego is facing."

Staff Response: Staff conducted the initial review of the proposed Map Waiver in accordance with the process set forth in Sections 15060 and 15061 of the

California Environmental Quality Act (CEQA) Guidelines and determined that the project is exempt from CEQA pursuant to State CEQA Guidelines, and using the City's CEQA Significance Thresholds.

To date, no substantial evidence has been identified by or presented to staff that would support a fair argument that this particular condominium conversion could result in significant physical impacts on the environment, either singly or cumulatively. Staff therefore determined that the project would not result in a direct, or reasonably foreseeable indirect physical change in the environment. City staff have determined that the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301(k). Appeals brought by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation have been heard before this City Council. This project was determined to be categorically exempt from the California Environmental Quality Act on August 12, 2008 (Attachment 1) and the appellant appealed that determination on August 19, 2008 (Attachment 2).

Staff agrees that the limited availability of affordable housing in the City of San Diego is an issue of concern. However, these concerns are policy issues within the purview of City Council, and revisions to relevant policies and regulations are a more appropriate way to address the concerns of the appellant. Significant revisions to the Condominium Conversion regulations were unanimously approved by the City Council on January 24, 2006 and June 13, 2006. While staff did evaluate the potential for physical impacts related to condominium conversions, it should be noted that the burden of proving that a categorical exemption has been inappropriately applied is on the appellant. The appellant has not proved his argument. The subject project does not include any physical changes in the environment that would not otherwise be exempt, or any intensification of use. There is no evidence that any growth inducement or cumulative impacts would result.

FISCAL CONSIDERATIONS:

The processing of this project to a decision will be charged to a deposit account established by the applicant. Should the City Council remand the matter back to the Development Services Department, or direct a Program Environmental Impact Report be prepared, significant costs could be incurred by the applicant.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This same type of appeal has been scheduled before the City Council in the recent past. The City Council concurred with staff and denied all of the appellant's appeals.

Planning Commission Decision: The Planning Commission has not acted (and is not required to act) on this issue of the appeal of the environmental determination of exemption.

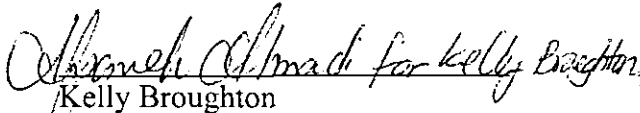

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COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The issue of the appeal of the environmental determination has not been presented to community planning groups.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

860 Agate, LLC, Owner (Attachment 3) and Robert Bateman, San Diego Land Surveying and Engineering, Inc., Applicant.

 Kelly Broughton Director Development Services Department	 William Anderson Deputy Chief Operating Officer: Executive Director of City Planning and Development
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THE CITY OF SAN DIEGO

City of San Diego
Development Services
1222 First Ave. • 3rd Floor
San Diego, CA 92101-4154
(619) 446-5210

www.sandiego.gov/development-services

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Development Permit Appeal Application

See Information Bulletin 505, "Development Permits Appeal Procedure" for information on the appeal procedure.

1. Type of Appeal:

- ☐ Process Two Decision - Appeal to Planning Commission
☐ Process Three Decision - Appeal to Planning Commission
☐ Process Three Decision - Appeal to Board of Zoning Appeals

- ☐ Appeal of a Hearing Officer Decision to revoke a permit
☒ Process Four Decision - Appeal to City Council

2. Appellant Name Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)
 Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development,
 c/o Cory J. Briggs, Briggs Law Corporation

Address City State Zip Code Telephone
 99 East "C" Street, Suite 111, Upland, CA 91786 909-949-7115

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Unknown (Applicant Name not shown on Notice of Right to Appeal Environmental Determination)

4. Project Information

Permit/Approval Being Appealed & Permit/Approval No.:

Date of Decision:

City Project Manager:

Project 161894-860 Agate Map Waiver

August 12, 2008

Linda French

Decision (describe the permit/approval decision):

The project has been determined to be exempt from environmental review under the California Environmental Quality Act.

5. Reason for Appeal

- ☒ Factual Error ☒ New Information
☐ Conflict with other matters ☒ City-wide Significance (Process Four decisions only)
☒ Findings Not Supported

Description of Reasons for Appeal (Please relate your description to the allowable reasons for appeal noted above. Attach additional sheets if necessary.)

The determination that the project is exempt from environmental review under the California Environmental Quality Act is wrong.

The project does not qualify for exemption under the CEQA Guidelines. Furthermore, the project does not qualify for exemption under the CEQA Guidelines based on exceptions to exemption arising from the cumulative and other potentially significant adverse environmental impacts of converting apartments to condominiums, especially in light of the numerous proposed conversions and the serious decline in affordable housing that the City of San Diego is facing.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature

Cory J. Briggs

Date August 19, 2008

Note: Faxed appeals are not accepted.



THE CITY OF SAN DIEGO

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

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Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☐ Conditional Use Permit
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☒ Map Waiver ☐ Land Use Plan Amendment • ☐ Other

Project Title

Project No. For City Use Only

860 Agate Street Map Waiver

161894

Project Address:

860 Agate St.

Part II To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved /-executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Project Title:

C02437

Project No. (For City Use Only)

Part II - To be completed when property is held by a corporation or partnership**Legal Status (please check):**

☒ Corporation ☒ Limited Liability -or- ☐ General) What State? CA Corporate Identification No. 200805610124
☐ Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. **Note:** The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. **Additional pages attached** ☐ Yes ☐ No

Corporate/Partnership Name (type or print):

860 Agate, LLC

☒ Owner ☐ Tenant/LesseeStreet Address:
1110 Opal St.City/State/Zip:
San Diego, CA 92109

Phone No: 619-379-1194 Fax No:

Name of Corporate Officer/Partner (type or print):
Karen Dodge

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

☐ Owner ☐ Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

☐ Owner ☐ Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

860 Agate, LLC

☒ Owner ☐ Tenant/LesseeStreet Address:
1110 Opal St.City/State/Zip:
San Diego, CA 92109

Phone No: 619-379-1194 Fax No:

Name of Corporate Officer/Partner (type or print):
Mike Dodge

Title (type or print):

Signature : *Mike Dodge* Date: *7-25-08*

Corporate/Partnership Name (type or print):

☐ Owner ☐ Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

☐ Owner ☐ Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

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DETERMINATION OF: ENVIRONMENTAL EXEMPTION

Pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines

AGENCY: CITY OF SAN DIEGO

PROJECT NO.: 161894

DATE: August 12, 2008

Action/Permit: Map Waiver & Utility Undergrounding Waiver

Permit No.: N/A

Description of Activity: 860 Agate Map Waiver: A Map Waiver to waive the requirement for a Tentative Map to convert two existing residential units to condominiums and a Waiver from the requirement to underground the existing overhead utilities.

Location of Activity: 860 Agate Street, Pacific Beach Community Plan area

1. ☐ This activity is **EXEMPT FROM CEQA** pursuant to:
- ☐ Section 15060 (b) (3) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
2. ☒ This project is **EXEMPT FROM CEQA** pursuant to State CEQA Guidelines Section checked below:

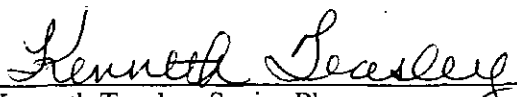
**ARTICLE 19 of GUIDELINES
CATEGORICAL EXEMPTIONS**
(Incomplete list)

Sec.	Short Name
<input checked="" type="checkbox"/> 15301 1	Existing Facilities
<input type="checkbox"/> 15302 2	Replacement or Reconstruction
<input type="checkbox"/> 15303 3	New Construction or Conversion of Small Structures
<input type="checkbox"/> 15304 4	Minor Alterations to Land
<input type="checkbox"/> 15305 5	Minor Alterations in Land Use Limitations
<input type="checkbox"/> 15306 6	Information Collection
<input type="checkbox"/> 15311 11	Accessory Structures
<input type="checkbox"/> 15312 12	Surplus Government Property Sales
<input type="checkbox"/> 15315 15	Minor Land Divisions
<input type="checkbox"/> 15317 17	Open Space Contracts or Easements
<input type="checkbox"/> 15319 19	Annexation of Existing Facilities and Lots for Exempt Facilities
<input type="checkbox"/> 15325 25	Transfer of Ownership of Interest in Land to Preserve Open Space
<input type="checkbox"/>	

**ARTICLE 18 of GUIDELINES
STATUTORY EXEMPTIONS**
(Incomplete list)

Sec.	Short Name
<input type="checkbox"/> 15261	Ongoing Project
<input type="checkbox"/> 15262	Feasibility and Planning Studies
<input type="checkbox"/> 15265	Adoption of Coastal Plans and Programs
<input type="checkbox"/> 15268	Ministerial Projects
<input type="checkbox"/> 15269	Emergency Projects
<input type="checkbox"/> Other	

It is hereby certified that the City of San Diego has determined the above activity to be exempt:


Kenneth Teasley, Senior Planner
Environmental Analysis Section

Distribution:

Exemption file
Project Manager